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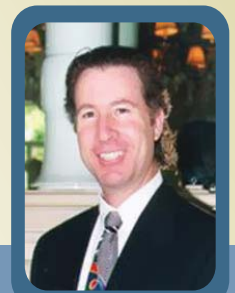


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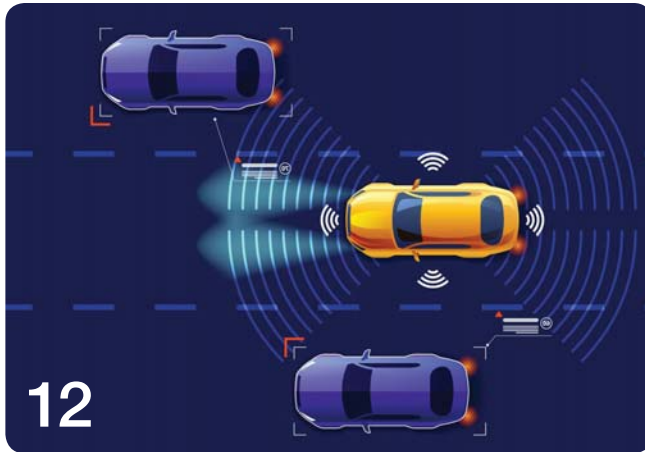
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Now is the Time For Unity

THE MANY MEMBERS WHO have invested their blood, sweat and tears in the SFVBA over the years understand that the business of running a Bar is, to say the least, challenging.

With all of the traditional stresses of running a small business, directing the course and work of the organization is often accompanied by strong opinions on how the Bar should move forward and operate.

And while good decisions are often the result of a process of stress testing options to determine which truly is the best course of action, at the core of every member's advocacy for a particular outcome should lie one fundamental truth—their position should be based on what is best for the entire Bar—not for their own personal interests, not for those of their firms or friends or connections, and not for any political agenda.

It is not idealistic, then, to believe that our members, trustees and staff, many of whom have committed countless of hours to the cause, are fundamentally motivated by their belief in our Bar and their commitment to making it better.

I am not naive and understand that the best interests of the organization and one's personal interests can often overlap.

Difficult decisions are made every day by the Bar's leaders, and, over the past several months, the desire to return to normal operations seems within our grasp, but, as always, we must adapt and make decisions based upon current conditions.

One of these challenges balances on the recent rise of the Delta variant

DAVID G. JONES
SFVBA President



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and upsurge in COVID-19 infections, resulting in a new mask mandate in Los Angeles County. Just when we thought that it was time to open our Bar to in-person events, safety concerns have called for us to delay them again—a very disappointing and frustrating situation.


While Los Angeles County is more highly vaccinated than many areas of the country, and the risks of in-person events, particularly outdoor and masked, have decreased, we have made the choice to protect members from the possibility of infection at in-person events, at least for the time being.

Such decisions are not easy. They involve a myriad of safety, financial and strategic considerations and the Bar's leadership is constantly striving to act in the best interests of all its members and best prepare the organization for a bright future.

I cannot predict the future; none of us can. But of one thing I am absolutely certain. On your behalf, I will always act in the best interests of our members.

When everyone in the organization, as they have this year, focuses solely on the best interests of the SFVBA with no other agenda, it will emerge from this difficult time and shine into the future.

Optimism and resilience are important in weathering difficult times. But purity of intention and commitment is what makes our Bar truly great.

With that, let us dedicate ourselves to our Bar and commit to unifying and emerging from this difficult term together, as one...hopefully in person! 

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- Medical Fraud Case: Dismissed, Preliminary Hearing (Ventura)
- Domestic Violence: Not Guilty, Jury Finding of Factual Innocence (San Fernando)
- \$50 Million Mortgage Fraud: Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation: Dismissed Search and Seizure (Long Beach)
- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
- Several Multi-Kilo Drug Cases: Dismissed due to Violation of Rights (LA County)
- Misdemeanor Vehicular Manslaughter, multiple fatality: Not Guilty Verdict (San Fernando)
- Federal RICO prosecution: Not Guilty verdict on RICO and drug conspiracy charges (Downtown, LA)
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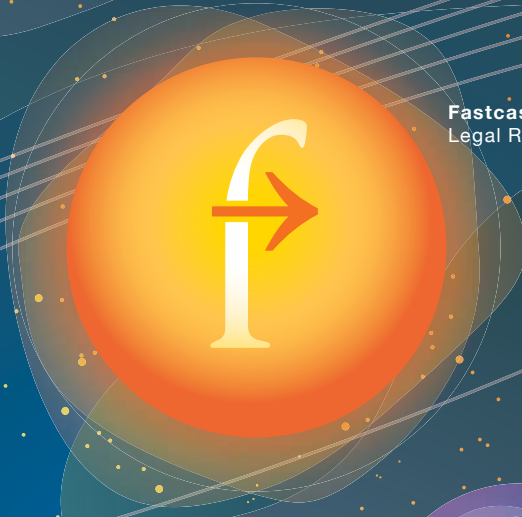
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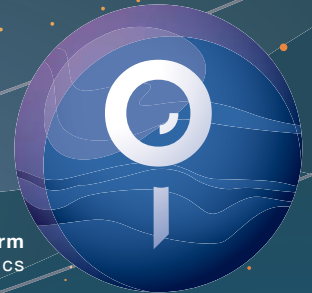
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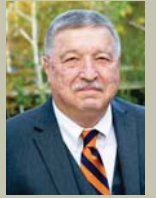
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A Lesson in Leadership

MICHAEL D. WHITE
SFVBA Communications
Manager



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THERE IS A STORY—
apocryphal, but no less telling—
of President Abraham Lincoln.

As history would sadly play out, Lincoln had no short supply of enemies during both his legal and political careers.

The story is told that, after being nominated for the presidency in Chicago in May of 1860, he was seated at a dinner table, and a rather outspoken woman accused him of being “two-faced.”

Supremely self-aware, Lincoln took a deep breath and calmly responded with the question: “Madame, if I had another face, would I be wearing this one?”

The dictionary defines self-awareness as “an awareness of one’s own personality or individuality”—a simple definition to be sure, that is, perhaps, much easier to express than achieve.

“Self-awareness is an effort. It’s a conscious effort to invest in understanding who we are, who others are, our universal rules that [we] apply in life and our commitment to the future,” says Cam Caldwell, Ph.D., an author and professor of psychology at the University of Illinois at Springfield.

For leaders struggling to develop self-awareness, he says, “It takes work and a willingness to recognize that reality is truth.” Genuine self-awareness is one of the key elements of emotional intelligence (EI), a term that refers to a person’s ability to identify and manage their emotions and identify and influence others’ emotions.

Developing self-awareness as a leader will strengthen not only individual

performance but organizational performance as well.

Ultimately, the immense amount of understanding, trustworthiness and wisdom that self-aware leaders possess equips them with critical skills for success.

“We’re committed to becoming excellent because we’re committed to the moral obligation we have to care about others...to make a better world,” Caldwell says of self-aware leaders.

“We sense this moral requirement that is part of humility that engages

looking to improve. They recognize their own strengths, weaknesses and hidden biases and take accountability for them, and they consistently ask for feedback in order to improve. They think beyond individual success.

At its core, self-awareness offers leaders far more than another tool for success. It helps them remember why they wanted to become leaders in the first place. It helps them discover, and live, the impact they want to have, not just on their team members—or even on their organizations—but on the world.


And, that marks a leader—at every level, national or local, from the battlefield to the boardroom—worth following.

Segue: On June 30, attorney Tamila C. Jensen ended her tenure as president of the Los Angeles County Bar Association.

Jensen, a past president of the San Fernando Valley Bar Association, was preceded

in the post by attorney and long-time SFVBA member, Ronald F. Brot.

It is an extraordinary happening in the history of the L.A. County Bar—a first, actually—to have two well respected attorneys from the SFVBA serve as president of what is the largest such organization in the country.

And it certainly is something the SFVBA can take no small degree of pride in. 



Tamila C. Jensen

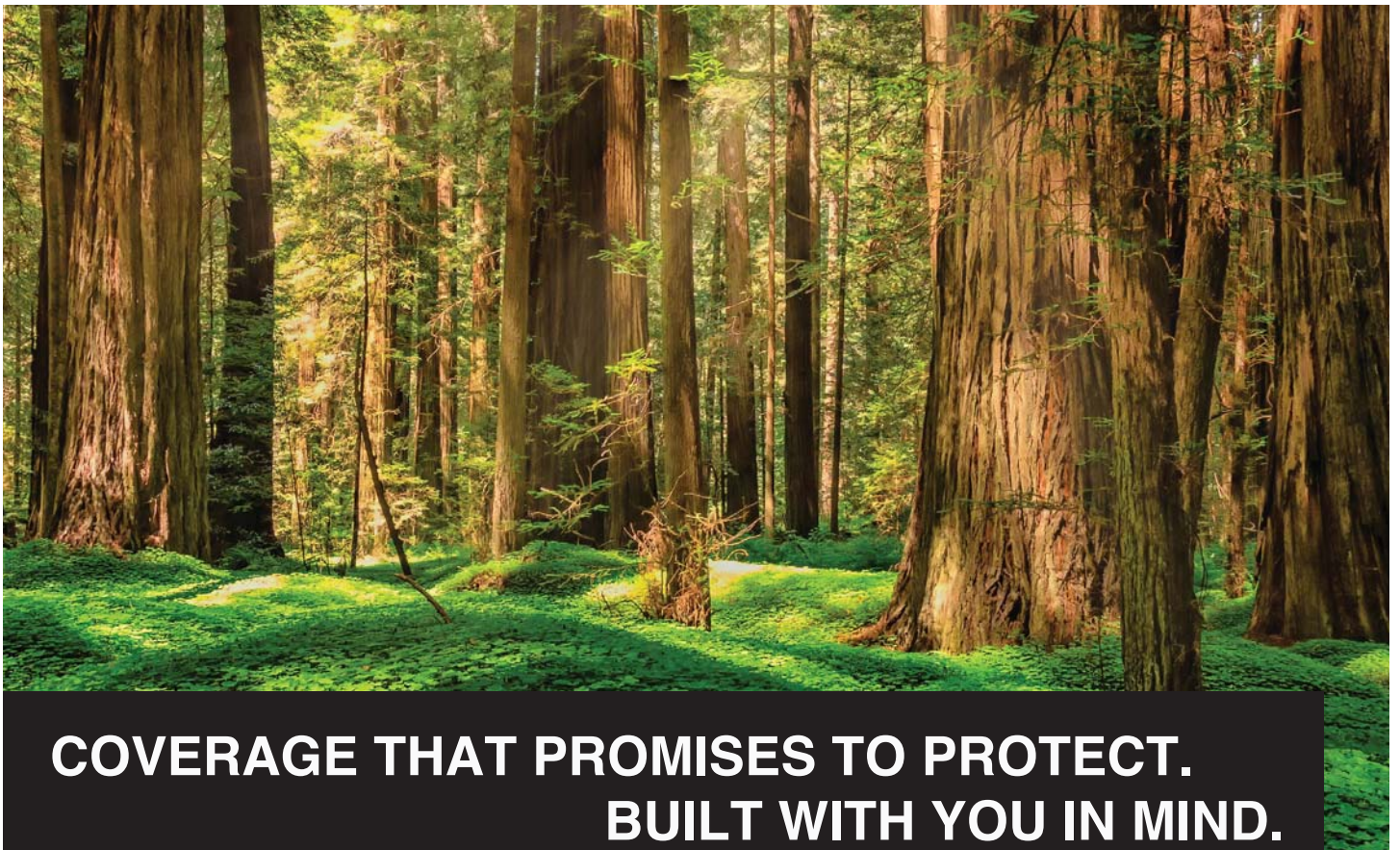


Ronald F. Brot

us and motivates us to invest in not only ourselves but in others and their opportunity to improve.”

Caldwell credits humility as one of the most important character traits associated with self-aware leaders. “Humility is a correct understanding of oneself, and that correct understanding leads to a better understanding of others.”

In addition to being humble, self-aware leaders are constantly



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By Steven A. Simons

Driverless Vehicles: A Question of Liability

As computerized, self-driving cars come closer to reality with the goal of zero accidents, such events are likely to become vastly more complex and more expensive to litigate. Despite the fascination with the new technology and media hoopla, the question of the hour is, “Who is liable when someone is injured or killed in an incident involving a driverless vehicle?”





ONE DAY LAST MAY, 25-YEAR-OLD PARAM Sharma climbed into the back seat of his self-driving vehicle saying he feels much safer than he would sitting in the driver's seat.

Unlike the fictional character, George Jetson, Sharma is a real person.¹

In May, Sharma, who lives in the San Francisco Bay Area, was arrested and charged with two counts of reckless driving and disobeying a peace officer.^{2 3}

The arrest was not Sharma's first brush with the law as he had been pulled over and cited for similar behavior on several previous occasions, one of them being only a few days prior.

Now infamous on YouTube, the celebrity Instagrammer later claimed his wealth and position outweigh the probability of ever being stopped from this kind of behavior in the future, saying, "If you take my Tesla away, I will just buy a new one."

Two years ago, a Tesla employee was playing a video game while operating a self-driving Tesla vehicle, and was killed in an ensuing crash.⁴

Then there is the tragedy of 15-year-old Jovani Maldonado of San Lorenzo, who died on a Bay Area interstate after a driverless Tesla rear-ended his father's pickup truck. Neither Tesla's much-touted autopilot system nor the driver attempted to slow down until a split second before ramming the pickup.⁵

These and other accidents have Tesla CEO Elon Musk backtracking and "admitting that he underestimated how difficult it is to develop a safe and reliable self-driving car."⁶

"Technologies that could guide an autonomous vehicle include a wide variety of electronic sensors that would determine the distance between the vehicle and obstacles; park the vehicle; use GPS, inertial navigation, and a system of built-in maps to guide the vehicle's direction and location; and employ cameras that provide 360-degree views around the vehicle. To successfully navigate roadways, an autonomous vehicle's computers, sensors and cameras will need to accomplish four tasks that a human driver undertakes instinctively: detect objects in the vehicle's path; classify those objects as to their likely makeup (e.g., plastic bag in the wind, a pedestrian, or a moving bicycle); predict

the likely path of the object; and plan an appropriate response..."⁷

With all of that in mind, the question remains: "Who is liable when someone is injured or killed in an incident involving a driverless vehicle?"

As computerized, self-driving cars come closer to reality, with the goal of zero accidents, such incidents are likely to become vastly more complex and more expensive to litigate.⁸

According to the *World Report on Road Traffic Injury Prevention*, "Increases in the use of autonomous car technologies are causing incremental shifts in the responsibility of driving, with the primary motivation of reducing the frequency of traffic collisions."⁹

Yet, the more autonomous vehicles that are produced, it seems the more potential problems are revealed.

Background

The California Department of Motor Vehicles (DMV) has established regulations applicable to autonomous vehicle testing and operation.¹⁰

In 2014, the DMV established the Autonomous Vehicle Tester Program to allow manufacturers to test autonomous vehicles with a licensed driver in the driver seat.^{11 12}

Four years later, DMV established the Autonomous Vehicle Driverless Tester Program for manufacturers to test their technology *without* a driver.¹³

Currently, NURO, INC is the only manufacturer to be issued a permit for the *deployment* of autonomous vehicles.

Because of the marked increase in accidents involving driverless cars, on June 30, 2021, the National Highway Traffic Safety Administration (NHTSA) released a standing general order for the auto industry requiring manufacturers and operators of Automated Driving Systems (ADS) and SAE Level 2 Advanced Driver Assistance Systems (ADAS) equipped vehicles to report accidents to the agency.¹⁴

While much has been written concerning the issue of liability for injuries incurred when driverless cars fail to function, there are three basic theories of tort liability:

- Traditional negligence, which places responsibility on the driver for any harms caused when reasonable care was not taken while in operation of the vehicle.



Steven A. Simons is a Northridge-based attorney working in, among others, the areas of automobile fraud and lemon law. He has been in practice since 1987 and can be reached at simonslaw@verizon.net.

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- No-fault liability, in which crash victims are not permitted to collect from the driver of the vehicle, unless the injuries resulting from the crash reach a certain level of severity. Instead, the victims are compensated through their own insurance—if any; and,
- Strict liability, which applies to abnormally dangerous or “ultra-hazardous” activities. Here the manufacture bears the associated costs regardless of whether they are legally at fault.

Many believe that existing laws are adequately suited to determine liability, while others beg to differ.

Congress has looked into the issue and, in 2017, the House passed H.R. 3388, known as the SELF DRIVE Act, while a similar Senate bill was drafted that prioritized safety; promoted innovation; remained technology-neutral; reinforced separate, but complementary, existing federal and state regulatory roles; strengthened cybersecurity; and encouraged public education.¹⁵

Neither legislation passed through Congress.

Further, despite ongoing discussions, no similar comprehensive autonomous vehicle legislation was introduced in the 116th Congress.¹⁶

To date, 31 states have enacted legislation regarding the operation of autonomous vehicles, while eight have taken no executive or legislative action, five have enacted both executive or legislative action, and the remaining six have taken only executive action.

Given the varying degrees of legislation and regulation, it is abundantly clear that Congressional action is necessary. The issue, then, would become the extent of that action.

Secure Operations

The National Governors Association (NGA) has stated that state governments are obligated to have a role with respect to vehicle and pedestrian safety, privacy, the linkage with advanced communications networks, and, perhaps most critically, the thorny issue of cybersecurity.¹⁷

Yet, despite both the proposed Senate legislation and the concerns of the NGA regarding cybersecurity and the operation of autonomous vehicles, no national legislation has been enacted.

While there are many potential avenues for potential liability, the issue of cybersecurity, then, remains one of the premier issues of concern.

A myriad of questions arise, such as:

- Should federal standards require vehicle technology that could report and stop hacking of critical vehicle software?

- How much information, if any, should car buyers be given about cybersecurity issues?
- To what extent should vehicle owners, operators, manufacturers, insurers, and other parties have access to data generated by autonomous vehicles?
- What are the rights of manufacturers and others to sell vehicle-related data to other parties?¹⁸
- To what extent can law enforcement access data generated to track suspected criminal activity?¹⁹

Protecting autonomous vehicles from hackers should be of paramount concern to federal and state governments, manufacturers, and service providers as more than a dozen portals—the airbags, lighting, and the tire pressure monitoring systems, for example—could be used as portals of entry to gain control of the vehicle's operations.

This is alarmingly true of conventional, non-autonomous vehicles, as well.

Though the National Highway and Traffic Safety Administration has assured the public that it has a solid game plan and that current standards were sufficiently flexible to allow for the development of autonomous cars, the Congressional Research Service, in April 2021, noted that much still needs to be done.²⁰

More Questions, Few Answers

Moving away from cybersecurity and looking again at the liability issue, there remains no clear answer.

According to Brookings, in 2014:

*"The legal precedents established over the last half a century of products liability litigation will provide manufacturers of autonomous vehicle technology with a very strong set of incentives to make their products as safe as possible."*²¹

Yet, according to an article in the November 2020 issue of the *Insurance Journal*, "As long as self-driving features require the driver to be ready to take control, the driver will remain liable for any accidents."²²

In 2020, Florida enacted legislation that would appear to place liability for injuries on the person who initiates the trip in the autonomous vehicle.²³

Typically, lawyers would consider two potential causes of incidents involving autonomous cars—either human error or mechanical failure.

There is a complex interplay between the software and the human in that the software could tend to make the

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driver-attendant complacent, overconfident in the software and less watchful for the potential for a collision.

It is compelling to note that Tesla's Full Self-Driving System comes with a disclaimer saying, "It may do the wrong thing at the worst time, so you must always keep your hands on the wheel and pay extra attention to the road."

This, of course, begs the obvious question—If the vehicle is fully autonomous, then why would anyone have to "pay extra attention?"

These "wrong thing" failures occur despite the existence of complex software backup systems, vehicle mounted cameras, sensors, and other fail-safe features.

Recent testing by *Consumer Reports* found that many of Tesla's safety features could be easily bypassed.²⁴

As cybersecurity concerns continue to swirl, this becomes yet another liability issue as another unknown variable is added to the mix.

Another question, then—If a so-called smart car is hacked and is involved in a collision, is it the hacker's fault since he took control of the vehicle?

Under the current California Civil Code, a defendant could assert that the hacker is liable, thereby pushing the liability off to some unknown person, thereby decreasing the injured party's recovery.²⁵

Is it the manufacturer's fault because the cybersecurity is not secure enough? Was this a Lemon Law issue?

California's Lemon Law statute—the Song-Beverly Consumer Warranty Act—is designed to address the inability of the manufacturer to repair defects in a product sold to consumers.²⁶

In its most basic form, the Lemon Law is designed to level the playing field for consumers when the manufacturer cannot, or will not, repair a non-conformity in the product.²⁷

In *Martinez v. Kia Motors America, Inc.*, the court found that the Song-Beverly Act:


*"...is a remedial statute designed to protect consumers who have purchased products covered by an express warranty...One of the most significant protections afforded by the act is...that 'if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer...' All that is necessary is that the consumer afford the manufacturer a reasonable number of attempts to repair the goods to conform to the applicable express warranties."*²⁸

More questions: Was the lack of security a defect? Did

the consumer provide an opportunity for the manufacturer to fix the defect?

Song Beverly requires that that manufacturer have a reasonable number of repair attempts with at least one court has determined that “attempts” is plural.”²⁹

The statute, thus, does not require the manufacturer “to make restitution or replace a vehicle if it has had only one opportunity to repair that vehicle.”³⁰

Or is the liability carried on the shoulders of the operator who, potentially, had the opportunity to take control and was busy playing a video game, or taking a nap in the back seat? 

¹ George Jetson is a fictional character from the animated television series *The Jetsons*. https://en.wikipedia.org/wiki/George_Jetson.

² California Vehicle Code § 23103 A person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property.

³ *Id.* § 2800 willfully refused or failed to comply with a lawful order of a uniformed officer.

⁴ <https://www.bbc.com/news/technology-51645566>.

⁵ <https://www.ktvu.com/news/san-lorenzo-family-files-lawsuit-over-tesla-autopilot-crash-that-left-teen-dead>.

⁶ <https://www.theverge.com/2021/7/5/22563751/tesla-elon-musk-full-self-driving-admission-autopilot-crash>.

⁷ Issues in Autonomous Vehicle Testing and Deployment, Congressional Research Service, April 23, 2021. <https://fas.org/sgp/crs/misc/R45985.pdf>.

⁸ The Big Question About Driverless Cars No One Seems Able To Answer,” *The Washington Post*, February 17, 2016.

⁹ Peden, Margie; Scurfield, Richard; Sleet, David; et al. (2004). *World Report on Road Traffic Injury Prevention*. Geneva: World Health Organization. ISBN 9241562609. Retrieved 9 October 2020.

¹⁰ Title 13, Division 1, Chapter 1 Article 3.7 – Testing of Autonomous Vehicles.

¹¹ Code of Regulations § 227.04. To date, 55 different companies have been issued Autonomous Vehicle Tester Program. This is up from the 20 permits issued at the time of the prior article by this author that was published in the March 2017 edition of *Valley Lawyer* magazine.

¹² *Id.* § 227.34.

¹³ *Id.* § 227.38. Currently there are 8 permits issued for this category.

¹⁴ Society of Automotive Engineers essentially has defined five levels of autonomous driving—Level 1 cars have features such as cruise control; Level 2 system is what’s available on Tesla and other vehicles today; and Systems at Levels, 3, 4, and 5 that can completely take over control of a vehicle in some situations, making it “safe” for the driver to do other things.

¹⁵ S. 1885, the AV START Act.

¹⁶ Maggie Miller, “Cyber Rules for Self-Driving Cars Stall in Congress,” *The Hill*, September 26, 2019, at <https://thehill.com/policy/transportation/463126-cyber-rules-for-self-driving-cars-stall-in-congress>.

¹⁷ Issues in Autonomous Vehicle Testing and Deployment, Congressional Research Service, April 23, 2021 at p. 23.

¹⁸ Civil Code § 1798.100 requires a business that collects a consumer’s personal information inform the consumers, before collection, the categories of personal information collected and the purposes for which it is collected.

¹⁹ Space limitations prevent the full exploration of these questions in this article.

²⁰ www.automotiveworld.com “Who Will be Liable for Driverless Cars?”

²¹ Brookings (2104).

²² <https://www.insurancejournal.com/news/national/2020/11/05/589778.htm>.

²³ See Florida Statutes, Title XXIII, Chapter 316, § 316.85.

²⁴ CR Engineers Show a Tesla Will Drive With No One in the Driver’s Seat, May 27, 2021 <https://www.consumerreports.org/autonomous-driving/cr-engineers-show-tesla-will-drive-with-no-one-in-drivers-seat/>.

²⁵ California Civil Code § 1431.2(a).

²⁶ *Id.* §§ 1790-1795.7.

²⁷ The *Song-Beverly Consumer Warranty Act* applies to “consumer goods” and not just to automobiles. [Civil Code § 1791(a)].

²⁸ *Martínez v. Kia Motors America, Inc.* (2011) 193 Cal.App.4th 187, 191 [122 Cal.Rptr.3d 497], internal citation omitted.

²⁹ Section 1793.2(d).

³⁰ *Silvio v. Ford Motor Co., Inc.*, 109 Cal.App.4th 1205, 1208 [135 Cal.Rptr.2d 846].

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Driverless Vehicles: A Question of Liability

Test No. 154

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. California requires you to keep both hands on the steering wheel when operating a vehicle on the highways.
☐ True ☐ False
2. There are five levels for the designation of autonomous vehicles.
☐ True ☐ False
3. Level five of the SAE autonomous vehicle designation requires a licensed driver in the driver seat.
☐ True ☐ False
4. In California, it is legal to sit in the back seat while the vehicle is on autopilot.
☐ True ☐ False
5. California allows driverless cars on the streets and highways.
☐ True ☐ False
6. Vehicles on autopilot rely upon cameras to detect hazards.
☐ True ☐ False
7. When a vehicle is on autopilot, it is legal for the driver to play video games.
☐ True ☐ False
8. In 2017, California began regulating the testing and operation of autonomous vehicles.
☐ True ☐ False
9. Autonomous Vehicle manufacturers can test their vehicles without a driver.
☐ True ☐ False
10. California's Autonomous Vehicle Tester Program requires that there be a licensed driver in the vehicle while it is operating
☐ True ☐ False
11. Congress has passed legislation to require reporting of accidents involving autonomous vehicles.
☐ True ☐ False
12. Manufacturers of autonomous vehicles are required to report accidents to NHTSA.
☐ True ☐ False
13. Not all 50 states have enacted legislation concerning autonomous vehicle operation.
☐ True ☐ False
14. An operator whose vehicle autonomous driving system was hacked prior to an accident will not be liable for any injuries resulting to a third person.
☐ True ☐ False
15. Autonomous vehicles are secure from hackers.
☐ True ☐ False
16. An injured party can recover under the Song Beverly Consumer Warranty Act if the injury arose out of a defect in the manufacturing process.
☐ True ☐ False
17. The Song-Beverly Consumer Warranty Act applies only to new vehicles.
☐ True ☐ False
18. Legislation prevents service providers from selling information gathered from vehicle electronic systems.
☐ True ☐ False
19. Autonomous Vehicles are subject to the California Lemon Law.
☐ True ☐ False
20. One goal of creating autonomous vehicles is to reduce traffic injuries.
☐ True ☐ False

Driverless Vehicles: A Question of Liability

MCLE Answer Sheet No. 154

INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$20 testing fee for SFVBA members (or \$30 for non-SFVBA members) to:

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5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0495.

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State Bar No. _____

ANSWERS:

Mark your answers by checking the appropriate box. Each question only has one answer.

- | | | |
|-----|-------------------------------|--------------------------------|
| 1. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 5. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 6. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 7. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 8. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 9. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 10. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 11. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 12. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 13. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 14. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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| 16. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 17. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 18. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 19. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |



REMOTE LEARNING APPRAISED: In a recent survey about law students' experiences with online learning, 59 percent of participants said their schools had successfully responded to the challenges of the pandemic, but only 43 percent rated the quality of their education as either "excellent" or "good."

One factor seemed to be whether the students had also experienced law school before the pandemic: 64 percent of first-year students said their online education was excellent or good, compared with a combined 43 percent of second-year and third-year law students.

ABA Journal spotlights more findings from the survey by the AccessLex Institute and Gallup, including which online teaching methods seemed especially popular with law students.



KNOW WHEN TO HOLD 'EM, KNOW WHEN TO FOLD 'EM: The Ninth Circuit Court of Appeals has ruled that the U. S. Tax Court "properly upheld" the IRS's deficiency determination because a taxpayer's gambling losses incurred from 2008 through 2010 did not qualify as deductible casualty losses.

The Tax Court had held that the taxpayer's losses from gambling were not deductible casualty losses even though the individual's compulsive gambling problem was a side effect of a drug he was prescribed after being diagnosed with Parkinson's Disease. [See *Mancini v. Commissioner*, No. (9th Cir. June 29, 2021) (unpub. op.)]

A PASS ON POT: The U.S. Supreme Court took a pass on a cannabis business tax case, marking another legal defeat for industry advocates attempting to overturn the onerous Section 280E of the federal tax code. According to Law360, the justices decided not to hear any arguments in an appeal from Eric Speidell, owner of Colorado-based The Green Solution.

Speidell and his industry allies had attempted to argue - but lost at the 10th Circuit Court of Appeals - that the IRS lacked the authority to request state information as part of investigations into alleged federal tax crimes.

The move was an attempt to limit the IRS' power under Section 280E, but that legal avenue appears now to have closed for good.



According to media sources, Speidell and a few other marijuana companies have been attempting to resist years-old summonses issued to them by the IRS, but their legal arguments have been rebutted by the courts at every turn.

Speidell requested in March that the United States' highest court rule that the Supremacy Clause in the U.S. Constitution essentially overrides 280E and wouldn't prohibit businesses such as The Green Solution from claiming standard business tax deductions.

In May, the Biden Administration, in a legal brief, reiterated its support for 280E, which prohibits standard business deductions for any company that traffics in Schedule 1 or 2 controlled substances.

WARRANTLESS SEARCH EXEMPTION: In the case of *Kilgore v. City of South El Monte*, the Ninth Circuit recently affirmed the district court's dismissal based on failure to state a claim of a 42 U.S.C. 1983 action brought by the plaintiff, alleging that the City of South El Monte had violated his Fourth Amendment rights when authorities, without a warrant, searched his massage business.

The panel concluded that the Fourth Amendment permitted the warrantless searches of the plaintiff's massage business where the California massage industry is a closely regulated industry and the Fourth Amendment's warrantless search exception for administrative searches of businesses applied.

The panel applied the factors in *New York v. Burger*, 482 U.S. 691 (1987), and held that the warrantless inspections were reasonable under the Fourth Amendment because there is no question that curtailing prostitution and human trafficking is a substantial government interest; the warrant exception is necessary to further the regulatory scheme considering the potential ease of concealing violations; and the City ordinance governing massage establishments and the conditional use permit sufficiently restrained the City in both the time and purpose of each inspection.

DON'T BE A PERFECT TARGET: What makes lawyers—especially solos and those in small firms—perfect targets for data breaches? According to several sources, they underestimate the threat, they lack time to focus on security, lack proper expertise, and find it hard to ask for help.

THINK BLOG: Taking the time to effectively write and distribute blog posts according to a few best practices will go a long way in helping you reach your marketing goals. A good example of a well-done lawyer blog can be found by checking out *The Employer Handbook* by Eric B. Meyer.

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ELECTION PAMPHLET

BOARD OF TRUSTEES ELECTION
SEPTEMBER 10, 2021

Dear SFVBA Member:

In just a few days, attorney members of the San Fernando Valley Bar Association have the unique opportunity to elect their Bar Leaders by voting in our annual Board of Trustees election.

By allowing members to choose from a ballot of candidates rather than a predetermined slate, our Board of Trustees is much more representative of our membership.

The last day to submit a ballot will be **Friday, September 10, 2021**. The election will be conducted online with ballots emailed to attorney members in the second week of August.

Members may request a ballot sent by U.S. Mail rather than electronic mail by contacting the Executive Director, Rosie Soto Cohen, by **August 23** at (818) 227-0497.

I encourage members to take a few minutes to review the following Election Pamphlet and read each candidate's statement.

Each nominee has contributed to our organization's programs and success, and represents a cross-section of our sections, areas of practice and our community.

Thank you for your support and membership through this challenging year. I appreciate you allowing me the opportunity to serve you.

DAVID G. JONES

President

San Fernando Valley Bar Association



CHRISTOPHER P. WARNE

PRESIDENT



THE SFVBA HAS A STRONG FIELD OF CANDIDATES FOR WHAT WILL BE an important rebuilding year. Like every other business, the bar association faces both tough decisions and new opportunities post COVID-19. The next elected board will have a unique yet vital opportunity to shape the future of the organization.

The next board's agenda includes strengthening membership numbers, restarting annual in-person events and section meetings, building our relationships with sponsors and associate members, and—most importantly—bringing value to our attorney members.

The 2021-2022 ballot features qualified candidates with diverse personal and professional backgrounds and experiences. I ask each voting member to carefully review the qualifications of each candidate, and vote for up to six trustees who you feel will bring a strong mix of ideas, enthusiasm, and vision to the association. This is your opportunity to build our leadership team.

For those members not on the ballot, you are encouraged to become involved in committees, sections, and events. Please help the next board of trustees grow your organization better, stronger, and more valuable than ever.

MATTHEW A. BREDDAN

CANDIDATE FOR PRESIDENT-ELECT



THANK YOU FOR THE NOMINATION AND HONOR OF SERVING THE SAN Fernando Valley Bar Association as the President-Elect.

For the past six years, I have had the pleasure of supporting and working for the SFVBA, its members, and the public we serve as a Trustee, Treasurer, and Secretary.

Over the past year and a half, we have faced unprecedented challenges, and our organization has worked tirelessly to ensure we continued providing essential professional and community-facing services. From virtual educational and networking events to community outreach and advocacy, the SFVBA's mission of fostering excellence in the legal profession and facilitating access to justice for all has persevered.

I am honored to be nominated for President-Elect and if selected to serve, I will work with our members and leadership to find innovative solutions to meet the diverse and ever-changing needs of our membership and community.

As we continue to navigate ever-evolving protocols, I intend to develop new avenues to bolster support for SFVBA programs and membership. Further, I want to build upon the lessons and successes our organization and membership have experienced and strengthen best practices to ensure enduring success for our community.

As a family law practitioner for over twenty-five years, I understand the value of strong professional relationships and the importance of professional organizations, especially in times of crisis. In addition to my years of service on the SFVBA Executive Committee, I volunteer my time in the Judge Pro Tem program, served as a member of the Family Law Executive Committee, and serve as a member of the Haven Hills Domestic Violence Agency's Board of Directors.

I look forward to the opportunity to continue serving the SFVBA as President-Elect as we continue to adapt and navigate our ever-changing industry.

HEATHER GLICK-ATALLA

CANDIDATE FOR SECRETARY



WHAT A YEAR IT HAS BEEN FOR US ALL! LIKE MANY ORGANIZATIONS, the SFVBA faced unprecedented challenges this past year, but with strong Board leadership, a wonderful staff, and the support of our members, the Bar continued to serve its members and the San Fernando Valley community through its programs and outreach events.

Despite the physical distance forced between us, I have felt an even stronger connection with my fellow Bar members as a result of the community coming together to support one another.

It was a privilege serving as Treasurer of the San Fernando Valley Bar Association last year, and I am honored to be nominated to continue serving the Bar as Secretary next year.

As a nonprofit law attorney, I regularly attend my clients' board meetings and prepare minutes of these meetings, so I am looking forward to putting my drafting skills to use on behalf of the Bar.

My knowledge of nonprofit law and my experience working both as a volunteer for nonprofits as well as counseling nonprofit boards will enable me to continue making positive contributions to the Board as Secretary.

As we head into this next year with a renewed sense of hope and excitement, it is my sincere belief that the Bar will continue to grow and emerge stronger than ever after a challenging year. Thank you for your support and your vote.

KENNY C. BROOKS

CANDIDATE FOR TRUSTEE



FELLOW SFVBA MEMBERS, THANK YOU FOR YOUR CONSIDERATION OF MY candidacy for the position of Trustee of this important organization.

As a professional liability defense attorney with the longtime San Fernando Valley law firm of Nemecek & Cole, my professional time is almost exclusively spent helping other lawyers. I am grateful for having the opportunity to serve this noble profession that is often unfairly maligned.

By advising lawyers in existing and potential professional liability matters, it frees up the lawyers in our community to focus their own important work of providing vital legal services. In my view, being able to serve as Trustee on the Board of the SFVBA would be a welcomed extension of my work assisting the San Fernando Valley legal community.

In my prior work with another professional organization (the Professional Liability Underwriters Society), I garnered significant experience planning, organizing, and executing professional networking, social, volunteer, and educational events.

If elected, I would hope to bring that experience to the SFVBA and continue its tradition of putting on quality professional programs for the benefit of SFVBA members and the community at large. As a Trustee, I would also aim my solution-driven thinking toward maximizing the SFVBA member experience and the organization's impact in the community.

Thank you for your consideration and I look forward to the possibility of serving you and the SFVBA as a Trustee in the coming term.

ALAN EISNER

CANDIDATE FOR TRUSTEE



I T IS WITH GREAT ENTHUSIASM THAT I ASK FOR YOUR VOTE TO SERVE ANOTHER term on the Board of Trustees of the San Fernando Valley Bar Association.

Despite the obvious challenges of the pandemic, we have accomplished so much for the Bar in the last two years. Our Mock Trial Committee held the inaugural (virtual) Mock Trial Competition, supporting the efforts of aspiring lawyers at prestigious law firms.

I, along with Taylor Williams-Munoz, began a monthly yoga class to support fitness and mindfulness among our members. And I have been recently appointed as the Criminal Law Section chair. In this capacity I will reach out to local bench officers to participate in education and practice programs and get speakers on criminal and crossover topics for our members.

I care deeply about the San Fernando Valley. I have been a lawyer here for three decades and have lived here throughout that time with my wife and three children. As a Certified Specialist in Criminal Law for over 20 years, I am proud of the work my firm, Eisner Gorin LLP, has done on criminal justice issues in our community.

I have a great appreciation for the energy and collegiality of the SFVBA. It is a vital resource for our community and can do even more. As a Board member in the coming term, I intend to continue to increase participation in the SFVBA through MCLE, networking and social events and other innovative programs.

These include programs to mentor young lawyers on courtroom procedure and advocacy, and on business development. I would also develop a speakers program featuring distinguished authors, journalists, entertainers, and others.

I believe the SFVBA can offer useful resources to help members deal with the stresses inherent in our profession and achieve a healthy work-life balance, such as the Yoga program we began, which emphasizes mindfulness, breathing, stretching, and stress reduction.

My goal is to continue to help our Board make the SFVBA an even more vibrant and relevant bar association for our profession and for our community, assisting members in the development of their careers, attracting more young members, and strengthening ties between the SFVBA and our community.

If you believe these are worthy objectives for the SFVBA, I ask for your support and vote. Thank you.

KYLE M. ELLIS

CANDIDATE FOR TRUSTEE



I T IS MY HONOR TO BE NOMINATED TO THE BOARD OF TRUSTEES, AND I ask for your vote.

Professionally, I work for the Los Angeles County Superior Court as a Supervising Research Attorneys, where I am responsible for supervising the research attorneys in our family law division as well as in several independent calendar courtrooms.

It has been the experience of a lifetime to be able to work with the judicial officers and attorneys at the Court and I am grateful to be able to serve our legal community by helping to ensure the smooth function of our court system.

I have had the privilege to serve on the Board of the San Fernando Valley Bar Association for the past three terms, and throughout my time on the Board, I have worked on a number of initiatives and committees.

My most recent accomplishment was successfully holding the SFVBA's Inaugural Mock Trial Competition in April, where our Association hosted law student competitors from throughout California's law schools.

Additionally, in my time as a Trustee, I have been the Chair of the Membership and Marketing Committee, I helped organize the 2020 Judge's Night, and I have worked on numerous other projects.

Personally, I am the father of two wonderful girls, one who is 2 years old, and the other is 3 months old – and if you've been in a zoom meeting with me this year you've likely already seen one or both of them!

I love the openness and inclusivity that our community here at the SFVBA fosters, and I know that my family is enriched by my work with all of you.

Thank you for taking the time to read this. I hope to be reelected and to continue serving!

ALEX J. HEMMELGARN CANDIDATE FOR TRUSTEE



IT IS AN HONOR TO ONCE AGAIN BE NOMINATED AS A CANDIDATE FOR THE SFVBA Board of Trustees, especially in the company of the other exceptional candidates, many of whom I've worked closely with over the last year (or longer).

A primary goal of my time as a Trustee has been to increase membership and participation in bar activities by new attorneys and law students. Notoriously hard to reach and harder still to motivate to get involved, law students and young lawyers are the next generation of leaders for our bar association and it is vital to have a strong young membership.

I have worked to increase participation from this key demographic over the last year with my involvement with the Membership and Marketing committee and as the co-chair of New Lawyers Section. I have also been in touch with the career services offices, program directors, and professors at several of the area law schools to reach law students either living in or seeking employment in the Valley.

If elected to a two-year term, I look forward to continuing my work to launch a "pre-meeting" before participating section meetings and other bar activities for new members and young lawyers. Gathering a few minutes early, the pre-meeting will provide an informal greeting by established section members, an introduction of the topic at hand, and the opportunity for networking with other young attorneys as well as section leaders and potential employers.

Hopefully, these pre-meetings will provide an invitation to new lawyers and law students and promote regular participation in our sections, one of our bar association's most valuable resources.

I appreciate your time and consideration and ask for your vote so that I may continue to serve you and the rest of the Valley legal community on the SFVBA Board of Trustees.

If you have any questions or would like more information, please do not hesitate to contact me. I look forward to seeing each of you in-person at a SFVBA event soon.

ALEXANDER S. KASENDORF CANDIDATE FOR TRUSTEE



FOR THREE YEARS I HAVE SERVED ON THE SFVBA BOARD OF TRUSTEES AND one thing is certain . . . I want to keep going!

With your help (aka vote), I can continue to proudly serve the San Fernando Valley legal community. I joined my law firm, Alpert, Barr & Grant, APLC, in 2008. A year before, I moved to the Valley and have made it my own.

Married with three children and a Golden Retriever, life is a little different for me than it was in 2007. But I remain committed to serving you and continue to follow the path of the attorneys at my firm as four of them served as President of this amazing organization.

It would be a tremendous honor if I could have your vote. And if I do, I will work tirelessly to make our legal community a shining light that we are all proud to belong to.

My goals continue to be to bring our younger lawyers into our ranks and grow our base as an organization. This past year plus has presented all of us with many challenges.

The SFVBA has been mindful of this and tackled new and dynamic challenges. I strive to continue to lead all of his into greener pastures and beyond.

MINYONG LEE

CANDIDATE FOR TRUSTEE



IT IS A PRIVILEGE AND HONOR TO BE NOMINATED TO SERVE FOR A SECOND TERM on the SFVBA Board of Trustees. I am excited about the opportunity to continue serving the San Fernando Valley legal community in this capacity.

I am a senior attorney at Neighborhood Legal Services of Los Angeles County, and work with domestic violence and sexual assault survivors in their family law matters. NLSLA is one of the largest legal aid organizations in Los Angeles County and provides free assistance to more than 150,000 individuals and families and addresses the most critical needs of people living in poverty throughout Los Angeles, with a large presence and focus in the San Fernando Valley.

I have a deep love for the Valley as I grew up here and left only to attend UC Berkeley for my undergraduate studies and returned to attend Pepperdine University for law school. My children are now attending the same schools that I went to as a child and my love for this community only continues to grow.

Over the last two years of serving as a Trustee, I have seen how SFVBA works to connect the legal community, and how in the most trying of times, it has sought to serve those in need and to provide resources to the most affected.

The level of determination by the bar to not only survive, but to thrive during the pandemic, makes me excited to see what else lies ahead as the world slowly seeks to find a new normal.

If elected, I would love to continue to bridge the public and private sectors to ensure access to justice for all Valley residents.

JOY KRAFT MILES

CANDIDATE FOR TRUSTEE



I AM HONORED TO BE NOMINATED AGAIN FOR THE SAN FERNANDO VALLEY BAR

Association Board of Trustees, to work alongside altruistic trustees devoted to those less fortunate, SFVBA staff committed to making connections between bar members and bench officers, and the community to assist with the recovery from this pandemic.

Since law school, I have been a member of the SFVBA. For the past two years, I have served as Co-President of the Valley Community Legal Foundation, the charitable arm of the SFVBA. As VCLF Co-President, I have supervised the Foundation's scholarships to meritorious high school students committed to community service and careers in law enforcement and legal education.

Prior to the pandemic, the Foundation wrote a curriculum and members went to Valley high schools to teach about constitutional issues—community volunteerism we hope to return to soon.

During the pandemic, I engaged local elected officials, such as California State Senate Majority Leader Bob Hertzberg and Los Angeles City Councilmember Bob Blumenfield, to raise Valley and VCLF concerns, and to together address the residual effects of the pandemic, including economic recovery and housing issues.

While on the SFVBA Board, I sponsored and participated in its First Annual Mock Trial Competition. Also, I found great satisfaction in belonging to the Family Law and Estate Planning sections, especially attending their MCLE events.

Philanthropy and trailblazing as a leader run in my family. I proudly carry the legacy of my late mother, attorney Marcia L. Kraft, the 2018 Honoree of the VCLF for her Exemplary Community Service.

I serve as President of Kraft Miles, A Law Corporation, an established, Woodland Hills, family law firm, and am a Certified Family Law Specialist. I live in Topanga with my husband, our two minor children, and our pandemic puppy.

Vote for "Joy" to bring enthusiasm, relevance, and dedicated service to the SFVBA.

PRAVIN A. SINGH

CANDIDATE FOR TRUSTEE



WISH WE TALKED MORE. REALLY, I DO. YOU SEEM LIKE A COOL PERSON, AND I could see us calling each other for advice once in a while.

Hopefully, at the next Installation Gala or Meet the Experts, we could get to know each other.

Actually, let's shoot for earlier. One goal we can set for ourselves this year would be to have more social or networking events.

I've been fortunate to have made some great friends at fun events, and honored to have been referred cases by my colleagues. If I am elected trustee, I promise to mix business and pleasure.

Take care, and see you soon.

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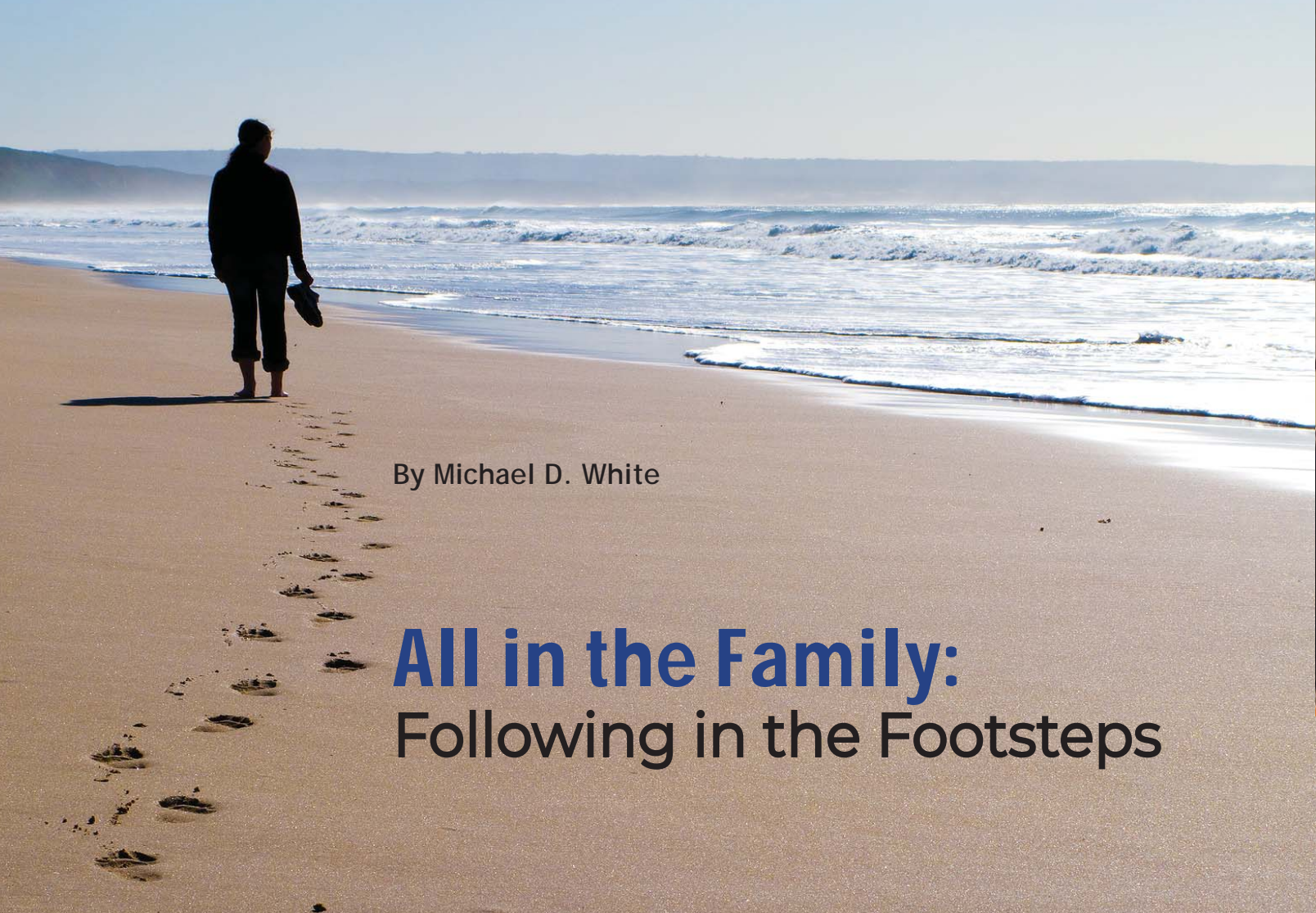
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By Michael D. White

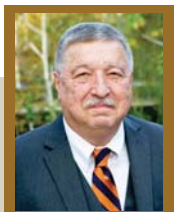
All in the Family: Following in the Footsteps

A FEW YEARS AGO, THE CENTER FOR THE LEGAL Profession at Harvard Law School published an article analyzing the phenomenon of individuals following in their parents' professional footsteps.

In 2004, the results of a national survey of attorneys conducted by *After the JD* found that "[a]bout 12 percent of the lawyers in the sample are the children of lawyers, and another 36 percent had some other close relative who was an attorney."

Interesting statistics, to be sure, but statistics alone don't tell the whole tale.

What they don't address are the backstories behind the stats. Not epic tales of building legacies of money and property, but legacies of things less tangible and of infinitely greater import—values such as professionalism, wisdom, integrity, ethics, accountability—that, when observed in action, can open the door to a career path and illuminate the way forward.



Michael D. White is editor of *Valley Lawyer* magazine. He is the author of four published books and has worked in business journalism for more than 40 years. Before joining the staff of the SFVBA, he worked as Web Content Editor for the Los Angeles County Metropolitan Transportation Authority. He can be reached at michael@sfvba.org.

Good Chemistry

"When I graduated college, I was a business major and I thought maybe I'd go into the entertainment industry," says attorney Heather Glick-Atalla. "Because I went to USC, I was in the joint program between the business and the cinema, television schools. I had some internships; I worked at Miramax and some of the studios, but I didn't love it."

Those experiences, she says, enabled her to shift gears. "Had my dad not been a lawyer, I might not have even thought to apply to law school. Now I'm sure, it definitely influenced me and I'm glad, very glad that it did."

Did she ever feel pressure to become a lawyer? "No, there was never any pressure," she says. "I'm sure that he was very pleased when I decided to go to law school. Over the years, I remember when I was young and we would talk about his work and my mom's job as an audiologist. I just remember my dad, having such a sense of pride for his



“I still call him and I ask him for advice from his very unique perspective.”
— Heather Glick-Atalla

work, and I really respected and admired that. And I think it definitely turned me on to the law to see how proud he was to be a lawyer.”

The die was cast and, after graduating near the top of her class from the University of San Diego School of Law in 2009, Glick-Atalla volunteered her time at Bet Tzedek—The House of Justice in Los Angeles, primarily working on behalf of Holocaust survivors seeking reparations from Germany and other European countries.

While there, she orchestrated a major survivor’s reparations program, which included drafting all necessary applications, forms, and correspondence to hundreds of clients as well as attorneys in Bet Tzedek’s volunteer network across the United States.

In 2010, she partnered with her father, attorney Marshall A. Glick, and, as a Certified Specialist in Estate Planning, Trust, and Probate Law, focuses her law practice on estate planning and nonprofit law at their firm, Glick Atalla PLC, in Sherman Oaks.

“My dad is wise and kind and a wonderful mentor,” says Glick-Atalla, who

currently serves as treasurer on the Executive Committee of the San Fernando Valley Bar Association. “He is very ethical, very hardworking, and very meticulous. What really comes to mind, though, are the professional instincts that he has developed over the more than 50 years he’s been a lawyer.”

Those instincts can’t be taught, she says. “I watch and learn. He’s very wise when it comes to certain things. And I think you get that wisdom just by practicing for so many years. That’s really what stands out to me when I think about him.”

What her dad has taught her, she says, “is really a reflection of him.”

“He taught me his values, such as never having the client being put in the position of having to chase you down, always returning calls and emails quickly, being responsive, and always putting the client’s interests first. He instilled those values in me, right from day one.”

It is also, she adds, a question of experience.

“While I’ve been practicing law for 11 years, he’s been practicing for more than 50. When I call him and ask, ‘What do you think about this?’ he taps into something you can’t read in a book. All those years of experience have built up a base of knowledge that has enabled him to be a good lawyer. And I feel that that kind of instinctual knowledge of how to deal with certain situations how to practice has been passed on to me. I still call him and I ask him for advice from his very unique perspective.”

With her father now largely retired, Glick-Atalla has taken over the reins at the firm.

“I think I’m very lucky that I was able to work with him,” she says in retrospect. “We’ve had such a great working relationship. It was like going into business together. Whether it’s running a law firm or a widget factory, you



“In January, it will be ten years since Morgan joined the firm... It’s so much better than I ever thought it was going to be.”— Robert J. Carlson

have to have that good chemistry with the family member in order for this to work. And my dad and I have always been very close. Yes, there were some kinks in the beginning, but over a period of time working together, it became a joy and it still is. I just feel very blessed.”

Precious Time Shared

Morgan M. Halford is an Associate with Carlson and Cohen in Encino, practicing in the areas of business, estate planning and real estate.

Halford received her JD in 2012 after graduating *magna cum laude* from the Santa Barbara College of Law. After passing the Bar exam, she went to work at the firm where her father, attorney Robert J. Carlson is a founding partner in the practice since 1975.

Frankly, she says, “I didn’t know what I was doing when I started here and found out that there’s a whole lot they don’t teach you in law school about actually practicing law. From day one, my father helped me figure it out. I can’t even imagine how anyone can attempt to practice law without being able to ask basic questions and get guidance from someone with more experience.”

Asked to describe her father, Halford, in a word, replies: “Patient. He’s very, very patient and that shows through, particularly when interacting with clients.”

And Carlson’s observations about his daughter? She is, he says, “very personable, very intelligent and empathetic with great organizational skills.”

The opportunity, she says, has given her “a lot of time with my father that I normally would not have enjoyed. I’ve been in the same room with him for the last ten years and we wouldn’t have had nearly that time together if we hadn’t. I’m very grateful for that. It’s been wonderful.”

Her dad concurs. “In January, it will be ten years since Morgan joined the firm. It’s been a very good fit and I feel very, very blessed and satisfied that I was able to have this time with her. It’s so much better than I ever thought it was going to be.”

Figure It Out

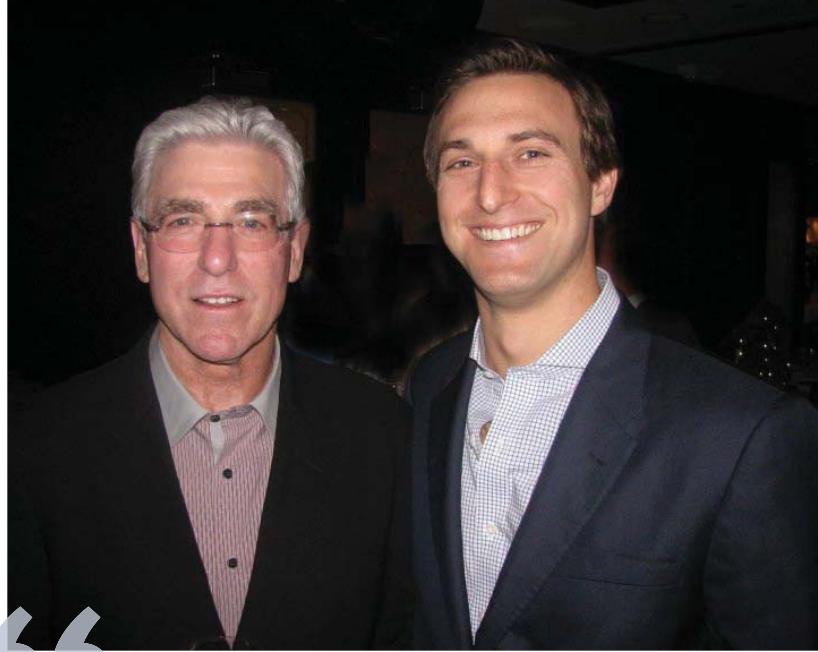
A professional liability and business litigation firm based in Encino, Nemecek & Cole was founded in 1984 by Frank W. Nemecek and Jonathan B. Cole.

Over the past 37 years, the firm has evolved from a two-attorney boutique to a mid-size law firm with 21 attorneys serving clients across the country.

Eleven years ago, firm founder Jonathan Cole invited his son, Marshall, to leave the firm where he handled complex business, real estate and environmental litigation and join Nemecek & Cole.

Now a managing partner, the younger Cole remembers his first days working with his dad.

After graduating from the University of San Diego Law



“Growing up with my dad and watching him being a lawyer made the decision to go into the law somewhat easy for me.”

— Marshall Cole

School and passing the Bar exam, he joined “a traditional type firm” with 100-plus attorneys, he says. “They’d put five or six attorneys on a case. I spent a year there before getting the invitation from my dad,” he says.

He felt as if he had “been thrown into the deep end. I had to figure it out and learn how to litigate cases...how to be a lawyer.”

Watching and learning were key, he says, even from an early age. “Growing up with my dad and watching him being a lawyer made the decision to go into the law somewhat easy for me, especially as my mom ran our office from the day the doors open and now my sister has taken over that role. Neither of them are lawyers; they handle all things management. I am very much cognizant of the fact that it’s a family business, and we value these, you know, very low turnover in our firm, it’s a very enjoyable place to work and to try and carry that into the future is not easy, and it hasn’t been easy, but we kind of managed to do it.”

“A lot of our lawyers and staff members have been with us for well over 20 years,” he says. “A lot of those people have known me since I was a little kid. To work with them side by side, in some cases oversee them is, was not an easy thing to accomplish. It took a lot of years to earn respect, and things like that.”

Jonathan Cole remembers, “I just wanted Marshall to prosper after he graduated from college.

He made the decision to go to law school, and I said, ‘Hey, great. Go for it.’ He did, passed the bar and started down the road. Now he’s an integral part of the whole operation and doing phenomenally in terms of generating business and trying cases.”

One of the things that this father/son team share is an avid interest in water ski racing.

A seven-time National Water Ski Racing champion, he held the record for men over 45 in the 1996 Catalina Water Ski Race; and was the Australia Bridge to Bridge water ski race record holder for men over 50.

Marshall has been a competitive water ski racer since he was six years old. He was the Junior World Champion for water ski racing in 2001 and was selected as a member of the United States Water Ski Racing Team for the 2001, 2003, 2005 and 2007 World Championships.

According to Jonathan, it was a comment that his son made to the media following one of his championship races that capsulize his attitude toward serving Nemecek & Cole's clients.

"Marshall said something that I thought was very impressive," he says. "He said that in ski racing, preparation is what it's about. If you're not prepared, you're going to lose. No, no ifs, ands, or buts; you've got to be prepared. If you do prepare, and utilize that preparedness to do things in the law or athletically, you'll come out on top. I'm very proud of him."

Honest and Fearless

Woodland Hills attorney Joy Kraft Miles has vivid memories of her own mother's career path in the law.

"My mom [Marcia L. Kraft] went to law school when I was in high school," she says. "Sometimes, she didn't have childcare, so I would go with her, and sit in the back of the classroom. And we would play hangman together. I ended up going to Southwestern, just like she did when I had children of my own."

Like mother like daughter, the law was a second career. "My mom had done a lot of things before she decided to become an attorney," says Miles, a member of the SFVBA Board of Trustees. "She owned restaurants and retail clothing stores. She worked as an arbitrator and had a vending business. I was a high school teacher for 11 years before applying to law school. In that way, I very much emulated her."

There were four children living at home when her mother went to law school and so I figured if she could do it with four, then I could do it with two," she says. "People all thought I was crazy to go to law school with very young children, but I did it and I passed the bar on the first time just like she did. Just to know it was possible was very important for me."

In 1990, Kraft hung out her shingle, started her practice and, for more than 20 years, never looked back practicing family law, representing both plaintiffs and defendants, petitioners and respondents in a wide variety of areas, including divorce, child custody, and complex asset division.

"My first paid job was with my mom," says Miles. "She only paid me \$15 an hour and told me that I had a lot to learn. There were no handouts. Throughout college, I did billing,

office management, paralegal, receptionist work for her. I was being groomed. And now I'm running the firm."

Prior to her death in 2019, Kraft was of counsel for Kraft Miles, A Law Corporation, Marcia used her wealth of experience not only to counsel the attorneys of the firm, but to help the Valley community through participating in numerous philanthropic ventures.

One such venture was the Valley Community Legal Foundation (VCLF), the educational and charitable arm of the San Fernando Valley Bar Association.

"My mom very much believed in giving back and was always involved in philanthropy work," says Miles. "My role as co-president of the Valley Community Legal Foundation has really been in honor of my her to pay tribute to her legacy in that regard by trying to be a leader in our community and helping those less fortunate."




“What I admired most about my mom is that she would stand up to injustice, and not be afraid.”

—Joy Kraft Miles

In June 2018, Kraft received the Exemplary Community Service award from the Valley Community Legal Foundation for her “outstanding philanthropic contributions to the San Fernando Valley.”

What quality, what value did Miles see in her mom that has inspired and energized her work as an attorney?

"What I admired most about my mom is that she would stand up to injustice, and not be afraid," she says.

"I also admired, and have tried to emulate, that she was bluntly honest with folks, whether they were clients or opposing parties. My mom was known as, sort of, being a tough New York Jewish broad, which I was kind of softened by California, in a lot of ways, but I still try to be strong and fearless like her." 

By Barry L. Pinsky

The Retirement Conundrum: Which Pathway to Follow



MY GRANDFATHER, MAY HE rest in peace, spent several decades working as a dedicated life insurance agent for a major insurance institution in New York and Los Angeles.

At the age of 65—considered to be the onset of old age at the time—he retired from active service and began to collect Social Security and his pension, provided by his long-time employer.

My grandfather and grandmother lived comfortably on the income afforded by these twin pillars of middle class American retirement – Social Security and a company pension, supplemented by Medicare for health insurance.

Unfortunately for most American workers, the days of the company pension have passed as irretrievably as the days of horses, buggies and floppy discs. Welcome to the world of 401(k), SIMPLE IRAs, and not-so-simple retirement concepts.

While many working adults in previous generations spent most of their working lives employed in one profession, or even by one company, today's generations often work for multiple employers, often in multiple industries, across a series of diverse careers prior to their retirement years.

With the exception of some government employees, few company pensions herald the so-called Golden

Years, with most of us bearing full responsibility for planning and implementing our own retirement paths.

The charge of funding an adequate nest egg has become especially critical in recent years as life expectancies continue to rise. In the mid-1960s, for example, life expectancy hovered around 70 years of age.¹

Today, it is common to engage with clients well into their 90s, and clients over 100 years of age are not unique. Planning for a quarter century of retirement expenses presents challenges far beyond those envisioned 60 years ago.

For financial planners, the most common question encountered, after,



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"How is the market?" is "Can I afford to retire?" The concern arises with increasing frequency in the midst of uncertain times, even from families with substantial wealth.

The answer, of course, is invariably, "It depends," and often requires a modest investment of time in basic financial planning calculations. Many financial and retirement planners estimate that most Americans will require 70-90 percent of their pre-retirement income to sustain their lifestyles after they cease working.²

The key to effective retirement planning is to understand the level of savings and investment required to create the necessary income in retirement and to put into place the mechanisms to make the appropriate plan a reality.

A financial plan can address a wide variety of financial goals and considerations, including creating an adequate income stream to fund retirement living expenses, planning budget limitations, education planning for children or grandchildren, legacy planning for an estate or philanthropy, long-term-care funding, and special funding allocations for travel or other specialty expenses.

Answering the question of retirement is inevitably a major consideration for any financial plan, as an adequate income stream represents the largest component of most planning projects.

Finding the Pathway

The path toward the successful navigation of retirement planning usually includes significant allocation of financial resources to retirement savings through a program established through one's employer.

Fortunately, the federal government has defined a variety of savings and investing options to help facilitate the task of planning one's retirement.

Business retirement plans afford a number of distinct tax advantages.

For example, contributions made by an employer to accounts benefiting

employees are deductible from the employer's business income, while the contributions made by employees—other than to Roth accounts, and up to certain limits—are also deductible from the employee's personal income for the year to which the contributions are attributed.

Funds invested in retirement plans grow tax-deferred, until such time as withdrawals are made, and, most commonly, withdrawals begin after retirement, at which time the account holder is usually in a lower tax bracket.



The path toward the successful navigation of retirement planning usually includes significant allocation of financial resources to retirement savings through a program established through one's employer.

Most retirement plans offered through private employers are one of two types—defined contribution plans or defined benefit plans.³

ERISA

All formal business retirement plans, both defined contribution and defined benefit, are subject to the rules laid out in the Employee Retirement Income Security Act of 1974.

Known as ERISA, it sets the standards for participant eligibility and inclusion, vesting schedules, benefit levels, and plan management in order to assure that employees derive appropriate value from the overall contributions by their employer to the retirement plan as a whole.

While all plans are subject to ERISA regulations, contribution levels,

reporting documentation, investment options, and plan management details differ among the various plan types, with each offering specific options and featuring specific requirements and limitations.

Most employer retirement plans are defined contribution plans in which the employee and/or the employer make contributions to investment accounts credited to each employee's individual benefit account.⁴

At retirement, an employee receives the accumulated value of his and his employer's contributions, plus the earnings on the investments purchased with those contributions.

Various mandated employer contributions and/or actuarial tests assure that appropriate benefits accrue to the employees in an equitable manner.

As such, every plan is regularly reviewed and appraised by an independent administrator to evaluate the adequacy of the plan funding levels and to verify that the plan complies with ERISA requirements.

Profit Sharing Plans

One particular form of defined contribution plan which has been utilized by many law firms is the Profit Sharing Plan (PSP).

A PSP requires annual filing of Form 5500, which is generally provided by a CPA or third-party plan administrator engaged by the plan sponsor. Major advantages of PSPs include high annual employer contribution limits—\$58,000 for 2021—and flexibility as annual employer contribution is discretionary.⁵

Each plan must have a specific formula for allocation of employer contributions among all of the eligible employee participants. A multiple-employee plan must be established and audited regularly by a qualified administrator to assure that benefits do not improperly accrue to highly compensated employees.

Profit sharing plans may be utilized in conjunction with another complementary type of plan, often with a 401(k) plan which then permits employee salary deferrals. However, if the employer plan is a combined profit sharing/401(k) plan, the annual contribution limit remains a total of \$58,000 for 2021.

SEP IRAs

The simplest types of plans commonly utilized are IRA-based plans, including Simplified Employee Pension Plans, or SEP IRA plans.⁶

Each eligible employee establishes an account, and the employer contributes a uniform percentage of pay to each account. The maximum, employer-only contribution level is 25 percent of pay up to \$58,000 for 2021.⁷

Annual documentation is not required by the IRS; however, distributions taken from a SEP IRA are reported on IRS Form 1099-R.

A major advantage of SEP IRA plans is that contribution levels are optional each year. A SEP plan may be especially attractive for a sole practitioner due to the ease of start-up and operation, the flexibility of contribution level from year to year, and the relatively high contribution limits.

On the other hand, in larger practices, the requirement to cover a significant number of employees may add unaffordable costs. It should also be noted that funds contributed to a SEP IRA are immediately vested.

A SIMPLE—Savings Incentive Match Plan for Employees—plan, another IRA-based plan, may represent more manageable costs for a larger organization with up to 100 employees.

A SIMPLE plan collects voluntary salary reduction contributions from employees to \$13,500 in 2021, with an additional \$3,000 option for employees over age 50, along with employer matches up to three percent match of compensation for contributing participants most years, or two percent of compensation for every eligible employee every year.⁸

Though employee contributions are optional, employer contributions are mandatory as per the plan.

SIMPLE IRA plans, like SEP IRAs, do not require annual filing or testing.

While the ease of plan maintenance, along with the limitations of required employer contributions may make a SIMPLE IRA plan appealing, the lower level of permitted employee deferrals may be problematic for some employers and funds contributed to a SIMPLE IRA are immediately vested.

The Iconic 401(k)

The most popular form of a defined contribution plan—the 401(k)—has become America's primary retirement savings vehicle. In fact, the IRS has estimated that more than 58 million Americans currently participate in 401(k) plans through their employers, holding assets in excess of \$5 trillion.⁹

A 401(k) plan allows employees to defer a portion of salary pre-tax (or post-tax in optional Roth 401(k)s permitted by some employers) for investment in the individual's separate retirement account. Many 401(k) plans include an employer matching contribution up to a certain percentage of a participant's salary.

Employee and employer contributions, along with accumulated earnings, are deferred from taxation in traditional 401(k) plans until distribution.

Employees may defer up to \$19,500 in salary in 2021; \$26,000 for individuals over age 50.

As mentioned above, a 401(k) plan in combination with a PSP, may allow enhanced overall plan limits for employer and employee salary deferral.

For firms with a substantial number of employees, the 401(k) plan is a useful vehicle which can work well to benefit all employees.

However, the complex regulations for establishing, maintaining, and testing 401(k) plans are designed to help assure that all employee participants receive an appropriate portion of the retirement contributions made and that plans are not top-heavy with the benefits flowing inordinately to a few senior executive participants.

Denied Benefit Plans

For business owners who have a desire to quickly accumulate the greatest benefit for employees in the shortest possible time, a Defined Benefit Plan (DBP) may be of particular interest.

Unlike defined contribution plans which specify the employer and employee contribution levels which are permitted and/or required, a DBP specifies the pension benefit which is promised to the employee at a future retirement date.

The value of accumulated savings from employee deferrals, employer contributions, and investment returns in a defined contribution plan—a SEP IRA, SIMPLE IRA, profit sharing, or 401(k)—is unknown in advance, and depends on contribution levels and investment performance.

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The accumulated value to the employees is ultimately at the risk of each individual participant. On the other hand, though, the pension payout from a defined benefit plan is specified in advance, based on plan documents and employment history, with the risk of performance resting on the employer.

With a DBP, the sponsor guarantees a specific monthly pension benefit to employees based on a specific formula utilizing the factors relating to each participant's employment tenure, salary history, and age in order to determine appropriate pension levels.

The plan is usually funded by employer contributions, with the sponsor accepting responsibility for making investment and management decisions, and assuming the risk of plan performance.

In the case of a funding shortfall, the employer may be required to increase contributions, while, in the event of excess accumulation, funding may be cut back.

As with other retirement plan structures, a Defined Benefit Plan is forbidden from assigning inappropriately excessive contributions to the benefit of highly compensated employees.

However, since the costs associated with funding the pensions of more senior, more highly compensated members of a firm, defined benefit plans do generally require greater contribution levels for senior staff than might otherwise be permitted in many defined contribution plans.

Therein lays the opportunity and the appeal of DBPs for some firms, as they often permit significantly higher funding levels than any other type of retirement plan, and the owners of the firm often realize the greatest percentage of ultimate retirement benefit.

As one would expect, defined benefit plans are the most complex and the most costly business retirement plans to establish and maintain. Thus, before seriously contemplating the feasibility of a DBP, a careful evaluation

of a firm's employee census and long-term goals should be undertaken in conjunction with a qualified plan administrator.

As retirement pensions become a thing of the past and Social Security benefits will only go so far, a knowledge of retirement plan options and careful planning and implementation are key to meeting future attainable financial goals.


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By Charles White

Hidden Inside the Couch: The Tax Cash Hoard Defense

GEORGE KLEINMAN'S CASE started and ended with cash. That is the hoard of cash hidden inside a house that led to Kleinman being charged with filing a false and fraudulent joint income tax return on behalf of himself and his wife.¹

The U.S. District Court noted that:

"The defendant's father, Bernard Klienman, died in 1954. Beginning in 1944, and throughout the years from 1944 through 1949, savings bank accounts were opened in the father's name. Approximately \$55,000 was deposited in these accounts during these years, and from these accounts approximately \$50,000 was subsequently, and within the years mentioned, transferred to the defendant or to members of his family. This was accomplished in part

*by the transfer of cash by check from Bernard Kleinman to the defendant and members of his family, and in part by the transfer of assets from Bernard Kleinman to the defendant, which assets had been purchased with funds deposited in these savings bank accounts."*²

The Court found that *"In the instant case, the defendant was employed as an agent of the Internal Revenue Service from 1935 until 1951."*³

The Court suggested:

"Assuming, arguendo, that these were deposits of the defendant's funds in the continued pursuit of a conspiracy in his behalf, in the absence of evidence indicating the actual state of facts, it is

*as reasonable to conclude that this was the systematic disposition by the father of a hoard accrued by the defendant in some prior period, as it is to conclude that the funds were the current unreported earnings of the defendant transmitted to his father in some unknown manner."*⁴

The Court observed:

"The defendant's testimony was that in 1944 he learned that his father had a large hoard of money which his father told the defendant he had saved; that the defendant advised him to put into the bank a few hundred dollars at the time to avoid investigation by the Treasury Department; that in 1946 he told his father that



Attorney **Charles White** is a graduate of the University of Georgia. He graduated from the University of South Carolina School of Law and holds a Master of Laws LL.M. from the Chapman University Fowler School of Law. He can be reached at chawhite@chapman.edu.

inheritance and gift taxes could be avoided if his father were to turn over, in his lifetime, about \$12,000 per year to the defendant and the three members of his family; that the transfers to the defendant were in pursuance of this scheme; and that there was an understanding between the defendant and his father that the defendant was to stand in the place of his father and hold the money for the benefit of himself and his two sisters, as it was needed.”⁵

An interesting case with the position being taken here against assuming current unreported income, while being in favor of looking at the facts of the case to see whether a cash hoard defense might be considered.

Cash Hoard Defense

A defendant’s claim of cash on hand is commonly referred to as a cash hoard defense.⁶

A typical cash hoard defense asserts that the defendant in earlier years received money from such sources as gifts from family members or friends, or an inheritance, which is then spent during the prosecution period.⁷

In *U.S. v. Uccellini*, revenue agents attempted to negative a claimed hoard of \$15,000.⁸

In that case, the U.S. District Court granted a motion for judgment of acquittal:

“Consequently, it is argued that the jury could conclude that defendant had not only exhausted the alleged hoard, but in addition had expended approximately \$24,000 in excess of the income reported in his tax returns filed for the pre-indictment years, and thus there was no available cash at the beginning of the indictment years. But the government’s evidence tends to prove just the contrary, i.e., that

defendant either had considerable cash available at the beginning of 1951, or he acquired it during the first four months of 1951 from an undisclosed source other than his partnership business and real estate rents.”⁹

Before granting a judgment of acquittal the Court in *U.S. v. Birozy* suggested:

“That’s not the argument. It’s the argument, it’s the question of what was deposited of any resources whatsoever, including the cash on hand. That’s the argument. That must be deducted. That must be deducted. In other words, you can’t say the man has a going business for prior years and he’s paid taxes on the amounts of money that have been in that account and he starts off with an account for 1965 with \$150,000, he’s already paid taxes on. You can’t tax him to say he made \$150,000. You have to start off with cash on hand. That, to me, is simple. That’s business. It’s no different than if you have a savings account. If you have \$5,000. You have \$5,000. You pay the interest, but not the interest of previous years. You pay the interest that you’ve been accumulating.”¹⁰

Privilege Against Self-Incrimination

The Internal Revenue Service needs to know with an IRS publication strongly suggesting to “always ask about a cash hoard.”¹¹

“If there is a cash hoard, or other non-taxable income, the examiner will want to consider this information early in the examination. It will be necessary in every indirect method case. Cash-on-hand should be established for the beginning of each year under audit. Also, the taxpayer’s practice of keeping cash on hand should be determined for present and prior periods to establish any accumulation of cash over the years. Cash-on-hand is defined as including all cash not in a financial institution, such as at home, in pocket, in a safe deposit box or a safe.”¹²

The location list for cash hoard cash on hand is not exhaustive. A taxpayer might have pay day money from prior years hidden inside a living room couch.

Meanwhile, in *U.S. v. Matthews*, in response to the summonses, defendants appeared at the local IRS office separately and refused to answer questions regarding their assets and sources of income, asserting their Fifth Amendment privilege against self-incrimination.¹³

The U.S. District Court determined invocation of the Fifth Amendment privilege against self-incrimination was appropriate in the case because:

“The defendants had and still have a real apprehension of danger that

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*by answering the IRS's questions and providing documents could lead to evidence necessary to prosecute them for criminal violations. The IRS had conducted a criminal investigation of the defendants for nine years, the last being 2001. Although no charges have been filed, the IRS is unwilling to represent that none will be filed. Transcript ("Tr.") at 23-24, 27 (Jan. 6, 2004). Furthermore, it refuses to grant immunity from criminal prosecution, even though its own counsel has requested it."*¹⁴

In *City of Cincinnati v. Bawtenheimer*, the Ohio Court of Appeals affirmed dismissal of a charge involving refusing to permit tax examination, concluding that:

*"As we find Cates persuasive on this issue, we adopt its reasoning in the instant case and conclude that the documents subpoenaed herein fell into the categories of documents for which the act of production may be privileged by the Fifth Amendment."*¹⁵

Tax Entrapment

Courts let entrapment defenses be raised for taxes.

In *U.S. v. Campbell*, Alphonso Campbell was charged with engaging in the business of accepting wagers on horse races without registering or paying the tax.¹⁶

The only evidence of such a continuity of activity that could amount to being engaged either in the business of accepting wagers or in receiving wagers was evidence of the receipt of a series of wagers from agents of the Internal Revenue Service at a solicitation from a man the defendant had known for 40 years.

There was no evidence that before that defendant had been suspected, reasonably or otherwise, of being engaged in receiving wagers, as there was only one somewhat ambiguous episode of the receipt of a wager from

any other person that was coincident with the last of the series of wagers placed by the Internal Revenue agents.¹⁷

The U.S. District Court found that there must be an acquittal on both counts:

*"The great difference is that the Agents' activities must serve to throw light on independently existing criminality and must not themselves be the constitutive elements of all the offense that is made to appear. The test of criminality is not the embittered and disdainful standard of Mark Twain's 'The Man that Corrupted Hadleyburg,'—the ability to withstand calculated temptation by the Government, but the more useful standard of actual engagement in the criminality at the solicitation of others than the Government; where that exists, the evidence of Agents' activities is useful, but useful only as it proves criminality beyond that which consists solely in the immediate reciprocals of the Agents' acts."*¹⁸

In *Zwak v. U.S.*, an undercover operation, conducted by agents of a division of the Treasury Department, resulted in criminal charges against Jerald Swak for the crimes of making and transferring firearms without paying the appropriate tax and the possession of firearms which lacked serial numbers.¹⁹

Though the U.S. Court of Appeals reversed the grant of summary judgment, it stated that it did, however, "find merit in Zwak's alternative contention that, even if these taxes are civil in nature, the Government ought not to be permitted to collect such taxes if the Government induced him to do the very illegal acts for which the taxes were assessed."²⁰

According to the Internal Revenue Service manual:

*"Undercover agents will avoid acts of entrapment and must observe the Constitutional rights of persons they come in contact with during assignments."*²¹

Tax Cash Hoard Defense

A comparison of cash hoard defenses shows two kinds—typical and atypical.

In *U.S. v. Bethea*, the U.S. Court of Appeals reversed William Bethea's income tax conviction and found that:

*"The typical cash hoard defense which the government disparages rests upon the totally uncorroborated testimony of a defendant that years ago he buried money in his backyard. Bethea's story is atypical. He says his brother made a lot of money in the narcotic traffic in New York. Vernon's criminal record confirms that he was in the business. Lawyer Moss' testimony confirms that Vernon at times carried very large sums on his person. And finally the bank's records show the rental of a safety deposit box by a defendant living at a poverty level. The government, in short offers no evidence to refute the probability of a cash hoard, and instead, relies solely upon a natural disinclination to believe that large sums of money are ever cached away."*²²

Hoard Storage

The cash hoard defense acknowledged by courts suggests that they permit taxpayers to store a cash hoard somewhere.

In this particular case, dollars were stored in bank accounts.

In *U.S. v. Melillo*, the United States District Court granted Nicholas Melillo a judgment of acquittal for willfully attempting to evade the payment of income taxes:

"For example, tens of thousands of dollars in income each year from major customers, including Fort

Totten Army Base in Brooklyn, were deposited directly in the mother's many bank accounts, by-passing the business records completely. This income was not reflected in the tax returns prepared by the accountant. Cash, claimed to have amounted to more than twenty thousand dollars each year, was used to purchase stops."²³

In another such case, cash was also hidden inside a house.

In *Bryan v. U.S.*, the U.S. Court of Appeals reversed Bryan's conviction where Bryan did not take the stand.

However, his wife did. Under oath, she testified that when she married Bryan he was a bootlegger possessed of approximately \$180,000, the residue of which was kept in a safe located in a closet in their home until she rented a lock box at the bank where she placed between \$150,000 and \$160,000 in cash.²⁴

Bryan illustrates one problem with cash hoard defense cases—as some taxpayers keep cash in a lock box at the bank, not deposited into an account that keeps a tally, there can be some doubt as to the exact amount of cash being salted away.

A taxpayer might walk into a bank and put thousands of dollars into a safety deposit box. In *Spalding v. Comm'r.*, the U.S. Tax Court noted:

"However, the life history of the petitioner and how he accumulated and secreted his hoard are beside the basic question of fact, which is whether the petitioner actually had approximately \$75,000 in cash when he came to Seattle in 1940. On this question the petitioner's story is corroborated by the testimony of his brother. The Court carefully observed the brother on the stand. He is a businessman of long standing who appeared at trial as a 'surprise' witness. We think, nonetheless, that his testimony

*is worthy of belief. It was to the effect that the petitioner, shortly after coming to Seattle in 1940, requested help in obtaining a safety deposit box, that the box was obtained, and that the witness saw the cash hoard, counted out at least \$61,000 himself, saw enough other money in counted packages to make up the remainder of the approximately \$75,000, and accompanied the petitioner to the bank where the cash was placed in the box. We have no reason for believing this witness perjured himself."*²⁵

Such concerns might be acceptable if no one other than the taxpayer might have custody of the cash hoard.

The critical issue is that police may have access to, or even possession of, the taxpayer's cash hoard. In *Powers v. C.I.R.*, the U.S. Tax Court found that petitioners had \$125,000 cash-on-hand in their bedroom safe.²⁶

The Court indicated that:

*"We come now to the one event, alleged to have occurred on August 1, 1947, and to which respondent directed his entire energies on brief. As a facet of his cash hoard story, the petitioner volunteered a narrative which described in much detail his taking \$125,000 in cash to the local police station in Rome for safe-keeping on August 1, 1947, in preparation for a family trip to Indiana. Esther and the petitioner's daughter, Faith, also testified in identical fashion."*²⁷

The Court held that the Commissioner of Internal Revenue had failed to establish fraud:

"We are left with the definite impression that these two policemen were thus testifying from their records rather than from independent memories

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and, further, that they were testifying largely on the basis of 'what probably happened.' Both witnesses were confused as to details; the first was somewhat inconsistent with an independent witness; and he also contradicted himself on the stand. We note again that the event in question could not prove the existence or extent of the petitioners' cash hoard, for their testimony was that the petitioner had the money in a large grocery sack which he handed to the policemen, saying only that it 'contained valuables,' and that the policemen placed it in the vault without looking inside. We believe that the event did occur. It is so bizarre as to be credible. The petitioner could have easily used a long dead or departed policeman if the story were fabricated."²⁸

The Powers court seemed to grasp how this works in applying the cash hoard defense doctrine. The cash hoard could be anywhere, including a local police station.

Powers reflects the reality of the safekeeping function of the police. Conversely, police might have a taxpayer's cash hoard, because they seized it.

The reality that a cash hoard is on the police premises is beside the basic question of fact.

Inherent Problems

The IRS is fully aware of the cash hoard defense. The Internal Revenue Service manual provides that:

- When a subject offers leads or information during a net worth investigation that, if true, would establish his/her innocence, such leads must be pursued. This also applies if the subject offers leads or information after the completion of an investigation but within sufficient time before trial.

- During the trial, if the government fails to show an investigation into the validity of the leads provided by the subject, the trial judge may consider the defendant's information as true and the government's investigation insufficient to go to the jury.
- Most leads refer to cash hoards, gifts, inheritances, and loans. These leads should be checked as routine steps taken during the investigation.²⁹

In *Lee v. U.S.*, the Court found as a fact that, on the basis of a great deal of contradictory evidence, that the cash on hand figure of \$6,000.00 as of December 31, 1961 is incorrect and is substantially understated.³⁰

The Court noted:

*"Lee testified, although his testimony is not without some contradiction, that he had more cash on hand than simply the cash in the cash register and in the safe, which was his business cash. Now, he has testified that he has for years before the period in issue, and he now, hoarded cash in a trunk in his residence."*³¹

The Court indicated:

"There is evidence that he had some cash on hand notwithstanding the outlays he made for the Acme Food Store purchase and acquisition. When I say cash on hand, that would be a cash hoard that was not great in 1958, but nevertheless did accumulate through the years. That is credible. There is no evidence of what his income was for '58 thru '62. The Government has not shown that. But the evidence is that as of a date in 1966, that he did have \$6,000.00 cash on hand."


Before determining that Kenneth Poy Lee and Chow Joy Lee were entitled to recover the taxes the Court explained:

*"Another corroborating circumstance is the practice that this taxpayer has continued even until this day, amassing substantial monies as a cash hoard, now having as much as \$12,000.00 in this same trunk."*³²

The Court was not sure the cash on hand figure was true.

At the Crossroads

Courts worried about IRS calculations when a cash hoard was present.

Taxpayers with cash on hand should seriously consider a cash hoard defense. 

¹ *U.S. v. Kleinman*, 167 F.Supp. 870, 871 (E.D.N.Y. 1958).

² *Id.* at 873.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 876.

⁶ The United States Department of Justice Tax Division, Criminal Tax Manual 12 (2020), <https://www.justice.gov/tax/page/file/1312166>.

⁷ *Id.*

⁸ *U.S. v. Uccellini*, 159 F.Supp. 491, 493 (W.D. Pa. 1957).

⁹ *Id.*

¹⁰ *U.S. v. Birozy*, 1974 WL 605, 4 (E.D.N.Y. 1974).

¹¹ Cash Intensive Business Audit Techniques Guide Chapter 4, Internal Revenue Service, https://www.irs.gov/pub/irs-utl/cashchapter4_210632.pdf.

¹² Cash Intensive Business Audit Techniques Guide - Chapter 6 14, Internal Revenue Service, https://www.irs.gov/pub/irs-utl/cashchapter6_210655.pdf.

¹³ *U.S. v. Matthews*, 327 F.Supp.2d 527, 528 (E.D.Pa. 2004).

¹⁴ *Id.* at 530.

¹⁵ *City of Cincinnati v. Bawtenheimer*, 1990 WL 138914, 2 (Ohio Ct. App. 1990).

¹⁶ *U.S. v. Campbell*, 235 F.Supp. 190 (E.D.N.Y. 1964).

¹⁷ *Id.*

¹⁸ *Id.* at 191.

¹⁹ *Zwak v. U.S.*, 848 F.2d 1179, 1180 (11th Cir. 1988).

²⁰ *Id.* at 1183.

²¹ Internal Revenue Manual 9.4.8.8 (2020), https://www.irs.gov/irm/part9/irm_09-004-008.

²² *U.S. v. Bethea*, 537 F.2d 1187, 1190 (4th Cir. 1976).

²³ *U.S. v. Melillo*, 275 F.Supp. 314, 315 (E.D. N.Y. 1967).

²⁴ *Bryan v. U.S.*, 175 F.2d 223, 226 (5th Cir. 1949).

²⁵ *Spalding v. Comm'r.*, 12 T.C.M. (CCH) 883 (1953).

²⁶ *Powers v. C.I.R.*, (1962) T.C. Memo 1962-5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Internal Revenue Manual 9.5.9.5.8, (2020), https://www.irs.gov/irm/part9/irm_09-005-009.

³⁰ *Lee v. U.S.*, (N.D. Miss. 1971) 1971 WL 467, 4.

³¹ *Id.*

³² *Id.*

Retrospective

San Fernando Bar Chief Stanley Lintz Dies of Cancer

Stanley M. Lintz, president of the San Fernando Valley Bar Association died of cancer on June 7 at the age of 47. A native of Chicago, Mr. Lintz received both his doctor degrees from Northwestern University, where at that time he was the second youngest student ever to enter that institution's school of law.

Formerly with the U.S. District Attorney's office, he was a partner in the Van Nuys law firm of Lintz, Williams, and Rothberg at the time of his death, and was well known in the legal community for his skills as a trial lawyer. Prior to assuming the presidency of the bar association, Mr. Lintz served on the board of directors as trustee and secretary, and was also a member of the board of directors of Neighborhood Legal Services, a program which serves the disadvantaged in the community. He was a past national vice president of the Federal Bar Association, and had been active on committees of the State Bar of California and the Los Angeles County Bar Association.

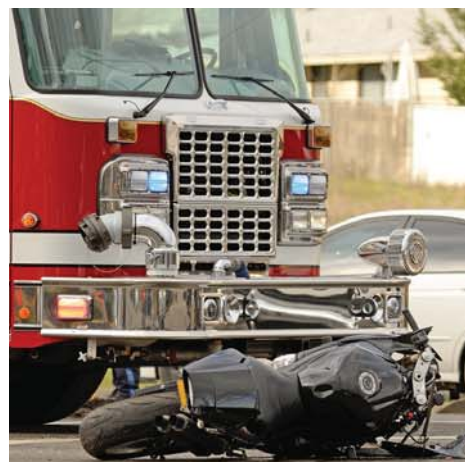
A leader in the Jewish community of the San Fernando Valley, Mr. Lintz was a member of Temple Beth Ami and one of the founders of the Valley Torah Center. He and his wife Audrey, who is a multiple sclerosis victim, were deeply involved in Volunteers of Multiple Sclerosis and devoted much of their time to helping others similarly afflicted.

In addition to the widow, he is survived by his daughter Ellen who is trained in the field of public health, and a son George who is a rabbinical student.



Attorney Stanley M. Lintz was elected President of the San Fernando Valley Bar Association in the fall of 1979. The following June, he tragically died of cancer.

An active and highly-regarded member of the Valley legal community, the SFVBA later created the *Stanley M. Lintz Award* in his honor to recognize individuals for their exceptional service to the Valley community and legal profession.



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Halting a Discriminatory ID Practice

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IN MARCH OF 2020, THE COVID-19 pandemic cost Ms. S her job.

Around that time, she also became unhoused, applied for unemployment insurance benefits, but was denied for failing to provide sufficient identification documentation to the California Employment Development Department (EDD).

Specifically, the agency said, she was denied for failing to submit an unexpired photo identification.

Ms. S initially submitted a North Carolina photo identification that had expired in 2019 along with other supporting identification documents, including a 2019 W-2 tax form. She also tried to get a new California identification card with the Department of Motor Vehicles, but was told she would need her birth certificate, which she did not have in her possession.

To obtain a duplicate birth certificate, she paid a \$25 fee and submitted an application—including a sworn statement by the California Department of Public Health—to the appropriate office in New Jersey, where she was born.

Ms. S managed to navigate this complicated process—despite having to deal with the daily struggles attached to being unhoused—before filing an appeal of the denial by the California EDD.

But by the time her appeal was heard in January 2021, she still had not received her birth certificate from New Jersey and, as a result, had not been able to get a new California identification card.

When Ms. S. came to the NLSLA office, she had been without unemployment benefits and CalFresh food assistance for months because of identity verification issues she was unable to resolve on her own.

While NLSLA's benefits advocates ensured Ms. S immediately received food assistance and General Relief cash aid, NLSLA Workers' Rights advocates represented her at a hearing on the denied unemployment insurance claim.

The EDD again took issue with the fact that her photo identification was expired, but the administrative law judge agreed with NLSLA, and determined that Ms. S had provided sufficient documentation—her identification was valid, and there was nothing in the law that specified the ID had to be current.

Within weeks, NLSLA saw another wrongful denial because of an expired photo identification. And then another.

The California Employment Development Department refused to accept expired driver's licenses, passports, and green cards, even though those documents adequately confirm a person's identity when submitted with other required supporting documentation.

It was clear EDD's policy was having a disproportionate impact on communities of color and people without housing.

Research around voter identification laws shows that people who are impoverished, Black, Latino or elderly are less likely to have a current identification, and face myriad challenges obtaining one.

As a result, the NLSLA got to work challenging the policy.


NLSLA combines individual representation with impact litigation and policy advocacy, working to address the immediate problem that an individual or family is facing while keeping an eye out for patterns that may indicate a systemic issue.

NLSLA continued to appeal individual denials based on expired photo identification documents, winning in every case by showing the state's EDD's policy is inconsistent with the California Code of Regulations and U.S. Department of Labor guidance.

NLSLA addressed a letter to EDD demanding that they change the policy to comply with existing legal standards, outlining the ways in which it is unlawful, and detailing its disproportionate impact on communities of color.

After several weeks, EDD reached out to let NLSLA know they agreed, and were working fast to change their policy to accept expired driver's licenses, green cards and other forms of photo ID, offering a lifeline to some of the most vulnerable people filing unemployment claims in California.

Ms. S received her unemployment insurance benefits in April 2021 and, the following month, she used her benefits to move out of the shelter where she had been living and pay for a new apartment.

Information on how you can donate or volunteer can be found on nlsla.org. 

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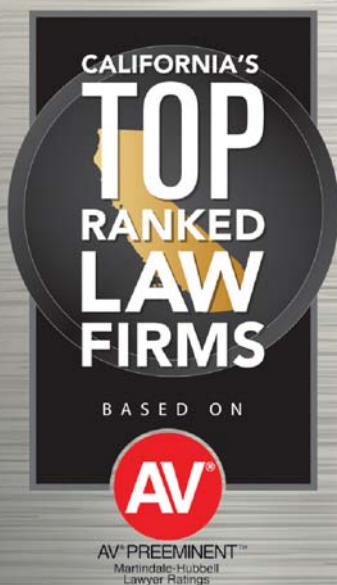
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